

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Burrows *et al.*  
SERIAL NO. : 10/562,091  
FILED : December 21, 2005  
FOR : System and Method for Customized Training to  
Understand Human Speech Correctly With a  
Hearing Aid Device  
  
ART UNIT :  
EXAMINER :

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Petition to Make Application When an Inventor  
Cannot Be Reached Under 37 C.F.R. § 1.47(a)**

Sir:

It is respectfully requested that the United States Patent and Trademark Office ("USPTO") grant this Petition under 37 C.F.R. § 1.47(a), and accept the submission of the executed declarations of the joint inventors John Cronin, Nancy Edwards, Justin Kunz and John Anthony Singarayar with the payment of the \$130 surcharge, as being responsive to the Notification of Missing Requirements under 35 U.S.C. § 371 ("Notice") received in the subject application. The remaining joint inventor, Mark Burrows, could not be found after diligent efforts were made to locate Mr. Burrows, as set forth in the attached Declaration of Courtney Lightfoot ("Declaration").

Referring to the Declaration, Ms. Lightfoot, an employee at ipCapital Group, Inc. ("ipCapital"), where Mark Burrows had been an employee until July 2, 2004, in response to requests by the undersigned attorney, attempted to locate Mr. Burrows and have Mr. Burrows execute a declaration for the subject

application. (Declaration, paragraphs 1 and 2).

On June 22, 2007, Ms. Lightfoot sent a package, via overnight courier, addressed to Mr. Mark Burrows at 127 Liberty Drive, Newtown, Pennsylvania 18940. (Declaration, paragraph 3). This address is the last known address for Mr. Burrows, as listed in the human resource records of ipCapital. (*Id.*). The package contained a declaration and power of attorney for the above-identified application and a cover letter instructing Mr. Burrows to execute the enclosed declaration. (*Id.*)

On June 25, 2007, Ms. Lightfoot accessed the courier's online package delivery status information and found that the package could not be delivered because the address was incorrect. Copies of the shipping label for the package and the delivery tracking information are attached as Exhibit A to the Declaration. (Declaration, paragraph 4).


In addition, on June 22, 2007, Ms. Lightfoot attempted to contact Mr. Burrows at his last known telephone number as listed in the human resource records of ipCapital. (Declaration, paragraph 5). After Ms. Lightfoot dialed the number, a recorded message stated that the number had been disconnected. (*Id.*).

Also on June 22, 2007, Ms. Lightfoot attempted to locate Mr. Burrows by conducting electronic searches on the Internet. First, Ms. Lightfoot searched the Google website for Mark Burrows, reviewing the search results for any references to "ipCapital" and "patents." (Declaration, paragraph 6). The search results, however, did not reveal a "Mark Burrows" with such descriptive

information. (*Id.*) Further on June 22, 2007, Ms. Lightfoot searched the White Pages website for Mark Burrows, once again reviewing the search results for references to "ipCapital" and "patents." (Declaration, paragraph 7). Of the search hits, one search hit listed a "Mark Burrows" having the same address as the last known address for Mr. Burrows listed in the human resource records of ipCapital. (*Id.*)

Thus, it is respectfully submitted that a diligent effort was made to locate Mr. Burrows, and that despite such effort, Mr. Burrows could not be located. Accordingly, the USPTO should grant this petition under 37 C.F.R. § 1.47(a) and accepted the enclosed, executed declarations of all of the inventors except Mr. Burrows, with the surcharge fee, as satisfying the requirements of the Notice. The Examiner is invited to telephone the undersigned if it is believed that further discussion would help to advance the prosecution of the present application.

Respectfully submitted,

  
Davy E. Zonerach  
Registration Number 37,267

NORRIS, McLAUGHLIN & MARCUS  
P.O. Box 1018  
Somerville, New Jersey 08876-1018  
Phone: (908) 722-0700  
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E-Mail: [ipdept@nmmlaw.com](mailto:ipdept@nmmlaw.com)

Attorney Docket No: 103164-010US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Burrows et al.  
SERIAL NO. : 10/562,091  
CUSTOMER NO. : 23526  
FILED : December 21, 2005  
FOR : System and Method for Customized Training to  
Understand Human Speech Correctly With a  
Hearing Aid Device  
  
ART UNIT :  
EXAMINER :

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Declaration of Courtney Lightfoot  
in Support of Petition under 37 C.F.R. § 1.47(a)**

I, the undersigned declarant, hereby state as follows:

1. I am employed by the ipCapital Group, Inc. ("ipCapital") and an Executive Assistant to John Cronin at ipCapital
2. Mark Burrows had been an employee of ipCapital until July 2, 2004.
3. On June 22, 2007, I sent a package, via overnight courier, addressed to Mr. Mark Burrows, 127 Liberty Drive, Newtown, Pennsylvania 18940. The address to which the package was sent is the last known address for Mr. Burrows listed in the human resource records of ipCapital. The package contained a cover letter instructing Mr. Burrows to execute a Declaration and Power of Attorney ("Declaration") for the above-identified application, which Declaration also was enclosed in the package.
4. On June 25, 2007, I accessed the courier's online package delivery status information and found that the package could not be delivered because

the address was incorrect. Copies of the shipping label for the package and the delivery tracking information are attached as Exhibit A.

5. Also, on June 22, 2007, I attempted to contact Mr. Burrows at his last known telephone number listed in the human resource records of ipCapital. When I dialed the number, a recorded message stated that the number had been disconnected.

6. Further on June 22, 2007, I conducted an internet search on the Google website for Mark Burrows and reviewed the search results for any references to "ipCapital" and "patents." The search results did not reveal a "Mark Burrows" with such descriptive information.

7. Also on June 22, 2007, I conducted an internet search on the White Pages website for Mark Burrows and reviewed the search results for references to "ipCapital" and "patents". One of the search hits listed a "Mark Burrows" having the same address as the last known address for Mr. Burrows listed in the human resource records of ipCapital.

### CONCLUSION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or of any patent issuing thereon.

Dated: June 28, 2007

Courtney Lightfoot  
Courtney Lightfoot

## EXHIBIT A







TrackingUpdates@fedex.com

To undisclosed-recipients::

06/25/2007 12:38 PM

cc

bcc

Subject Online FedEx Tracking - 861662436103

-----  
This tracking update has been requested by:

Name: Courtney Lightfoot

E-mail: clightfoot@ipcg.com

Message: Davy,

Here are the Fed Ex tracking results as of today. The envelope will be sent back to me since it could not be delivered. Any questions, let me know. - Courtney

-----  
Tracking number 861662436103

Ship date Jun 22, 2007

Service type Priority Envelope

Tracking results as of Jun 25, 2007 11:36 AM CST

Date/Time	Location/Activity
Jun 23, 2007 12:26 PM	BRISTOL, PA/At local FedEx facility
9:39 AM	BRISTOL, PA/Delivery exception
8:28 AM	BRISTOL, PA/On FedEx vehicle for delivery
8:13 AM	BRISTOL, PA/At local FedEx facility
7:07 AM	PHILADELPHIA, PA/At dest sort facility
4:10 AM	MEMPHIS, TN/Departed FedEx location
Jun 22, 2007 11:21 PM	MEMPHIS, TN/Arrived at FedEx location
7:40 PM	WILLISTON, VT/Left origin
6:37 PM	WILLISTON, VT/Picked up

Disclaimer

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This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the request and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com.

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ACCOUNT #: 114227803  
ACTUAL WGT: 1.0 LBS MAN-WGT

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IP CAPITAL GROUP INC  
400 CORNERSTONE DR  
STE 325  
WILLISTON, VT 05495

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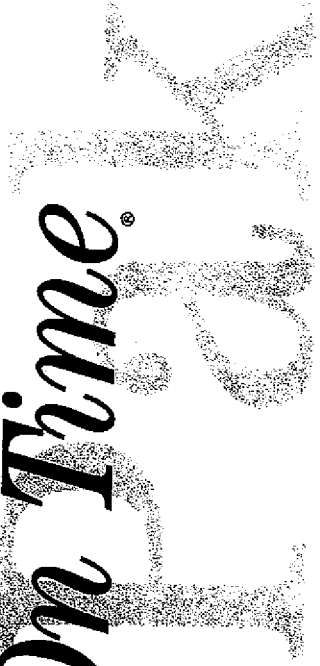
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**PCT**

**NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT  
OR THE DECLARATION**

(PCT Rule 44.1)

To:  
DAVY E. ZONERAICH  
NORRIS, MCLAUGHLIN & MARCUS, P. A.  
P.O. BOX 1018  
SOMERVILLE, NJ 08876-1018

Date of Mailing  
(day/month/year)

**16 NOV 2004**

Applicant's or agent's file reference  
103164-010WO

**FOR FURTHER ACTION** See paragraphs 1 and 4 below

International application No.  
PCT/US04/20387

International filing date  
(day/month/year)

24 June 2004 (24.06.2004)

Applicant  
JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

1. ☒ The applicant is hereby notified that the international search report has been established and is transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

**When?** The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.

**Where?** Directly to the International Bureau of WIPO, 34, chemin des Colombettes  
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 740.14.35

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect is transmitted herewith.

3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.

- ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

**4. Reminders**

Shortly after 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90 bis.1 and 90 bis.3, respectively, before the completion of the technical preparations for international publication.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/US  
Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
Facsimile No. (703) 305-3230

Authorized officer

Brian Szmal

Telephone No. (703) 308-0851

*Sheila H. Venzky*  
Patent Specialist  
Tech. Center 3700

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 103164-010WO	<b>FOR FURTHER ACTION</b>	see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.
International application No. PCT/US04/20387	International filing date (day/month/year) 24 June 2004 (24.06.2004)	(Earliest) Priority Date (day/month/year) 24 June 2003 (24.06.2003)
Applicant JOHNSON & JOHNSON CONSUMER COMPANIES, INC.		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 2 sheets.



It is also accompanied by a copy of each prior art document cited in this report.

#### I. Basis of the Report

a. With regard to the language, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.



the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international search was carried out on the basis of the sequence listing:



contained in the international application in written form.



filed together with the international application in computer readable form.



furnished subsequently to this Authority in written form.



furnished subsequently to this Authority in computer readable form.



the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.



the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

2. ☐ Certain claims were found unsearchable (See Box I).

3. ☐ Unity of invention is lacking (See Box II).

4. With regard to the title,



the text is approved as submitted by the applicant.



the text has been established by this Authority to read as follows:

5. With regard to the abstract,



the text is approved as submitted by the applicant.



the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. The figure of the drawings to be published with the abstract is Figure No. 1



as suggested by the applicant.



because the applicant failed to suggest a figure.



because this figure better characterizes the invention.



None of the figures

## INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/20387

## A. CLASSIFICATION OF SUBJECT MATTER

IPC(7) : A61B 5/00

US CL : 600/559

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 600/559; 434/332; 381/314, 68, 68.2, 68.4; 704/208, 207, 219, 233, 224, 230, 266, 263, 236, 209

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)  
WEST: hearing loss, amplification factor, map, hearing loss profile, word database, word list, amplification, train, training

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 5,933,801 A (FINK et al) 03 August 1999 (03.08.1999), see whole document.	1-15
A, E	US 2004/0136555 A1 (ENZMANN) 15 July 2004 (15.07.2004), see whole document.	1-15
A	US 2001/0041330 A1 (BROWN et al) 15 November 2001 (15.11.2001), see whole document.	1-15

☐ Further documents are listed in the continuation of Box C.

See patent family annex.

Special categories of cited documents:	
* "A" document defining the general state of the art which is not considered to be of particular relevance	"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
"E" earlier application or patent published on or after the international filing date	"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)	"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art
"O" document referring to an oral disclosure, use, exhibition or other means	"&" document member of the same patent family
"P" document published prior to the international filing date but later than the priority date claimed	

Date of the actual completion of the international search

Date of mailing of the international search report

22 September 2004 (22.09.2004)

16 NOV 2004

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Authorized officer

Brian Szmal

Telephone No. (703) 308-0858

Paternal Specialist  
Tech. Center 3700

**PCT**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To: DAVY E. ZONERACH NORRIS, MCLAUGHLIN & MARCUS, P. A. P.O. BOX 1018 SOMERVILLE, NJ 08876-1018		Date of mailing (day/month/year) <b>16 NOV 2004</b>
Applicant's or agent's file reference 103164-010WO		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US04/20387	International filing date (day/month/year) 24 June 2004 (24.06.2004)	Priority date (day/month/year) 24 June 2003 (24.06.2003)
International Patent Classification (IPC) or both national classification and IPC IPC(7): A61B 5/00 and US Cl.: 600/559		
Applicant JOHNSON & JOHNSON CONSUMER COMPANIES, INC.		

## 1. This opinion contains indications relating to the following items:

- |                                     |              |  |
|-------------------------------------|--------------|--|
| <input checked="" type="checkbox"/> | Box No. I    | Basis of the opinion   |
| <input type="checkbox"/>            | Box No. II   | Priority   |
| <input type="checkbox"/>            | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability   |
| <input type="checkbox"/>            | Box No. IV   | Lack of unity of invention   |
| <input checked="" type="checkbox"/> | Box No. V    | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/>            | Box No. VI   | Certain documents cited  |
| <input type="checkbox"/>            | Box No. VII  | Certain defects in the international application   |
| <input type="checkbox"/>            | Box No. VIII | Certain observations on the international application  |

## 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

## 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer <i>Brian Szmal</i> Brian Szmal Telephone No. (703) 308-0858 <i>Sheila H. Venzey</i> Patent Specialist Tech. Center 3700
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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing  
☐ contained in international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US04/20387

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO
Industrial applicability (IA)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 1-15 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the training unit can be accessed to generate a sound output constituting a normal version of the content and a modified version of the content amplified by the corresponding amplification factor, as claimed in Claims 1, 3, 12 and 14; and the respective pairs of the training units are stored on the media such that a normal version and a modified version of the word included in a pair of the training units can be generated as a sound output, as claimed in Claim 7.

Claims 1-15 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.



## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under Article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

**It must be in the language in which the international application is to be published.**

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments and any accompanying statement, under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the time of filing the amendments (and any statement) with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments (and of any statement) and, where required, a translation of such amendments for the procedure before that Authority (see Rules 55.3(a) and 62.2, first sentence). For further information, see the Notes to the demand form (PCT/IPEA/401).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see the *PCT Applicant's Guide*, Volume II.